

STATE OF MICHIGAN  
COURT OF APPEALS

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DEPARTMENT OF HUMAN SERVICES and  
WAYNE FASE,

UNPUBLISHED  
September 18, 2007

Petitioners-Appellants,

v

No. 266791  
Ingham Circuit Court—  
Family Division  
LC No. 05-001934-DS

RICHARD ERDMAN,

Defendant-Appellee.

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Before: Meter, P.J. and Kelly and Fort Hood, JJ.

KELLY, J. (*dissenting*).

I respectfully dissent. The trial court abused its discretion in setting respondent's child support obligation at zero. I would reverse and remand for a proper determination of child support.

It is well settled that child support payments are intended for the benefit of the child. *Gallagher v Dep't of Social Services*, 24 Mich App 558, 565; 180 NW2d 477 (1970). The amount of child support is calculated by reference to the 2004 Michigan Child Support Formula Manuel (MCSFM.) "While a trial court may enter an order of support that deviates from the formula, it may not do so without setting forth in writing or on the record why following the formula would be unjust or inappropriate." *Ghidotti v Barber*, 459 Mich 189 (1998). The criteria for deviating from the formula are mandatory and, to fulfill its statutory duty, a court must carefully articulate these factors to memorialize and explain its decision. *Burba v Burba*, 461 Mich 637, 644-45 (2000). The court must set forth the requirements articulated in MCL 552.605(2) if it decides to deviate from the traditional formula. *Id.*

MCL 552.605(2) provides:

Except as otherwise provided in this section, the court shall order child support in an amount determined by application of the child support formula developed by the state friend of the court bureau as required in section 19 of the friend of the court act, MCL 552.519. The court may enter an order that deviates from the formula if the court determines from the facts of the case that application of the child support formula would be unjust or inappropriate and sets forth in writing or on the record all of the following:

(a) The child support amount determined by application of the child support formula.

(b) How the child support order deviates from the child support formula.

(c) The value of property or other support awarded instead of the payment of child support, if applicable.

(d) The reasons why application of the child support formula would be unjust or inappropriate in the case.

The MCSFM provides trial courts with deviation criteria in order to determine if deviation is appropriate and to what extent:

(1) The Michigan Supreme Court has clarified that deviations cannot be based simply on disagreement with the policies embodied in the statutes or the manual. In *Burba v Burba*, 461 Mich 637 (2000), the Court held that disagreement with the policies implicit in the formula cannot be the basis for a deviation.

(2) In exercising the discretion set forth in this section, to the extent possible, the court should follow the formula's principles and algorithms, with the exception of those particular provisions that create an unjust or inappropriate result.

(3) The only basis for deviation from the formula is a finding that application of its provisions would be unjust or inappropriate in a specific case.

(4) Given the common factors considered, the law presumes that the Michigan Child Support Formula sets appropriate levels of support. However, in a limited number of individual cases, the amounts derived from application of the formula may have an unjust or inappropriate result. In those cases, the law anticipates that the court may exercise discretion in the best interests of the child to determine a just and appropriate amount of support.

(5) In exercising the discretion set forth in this section, the court may consider any or all of the following factors, as well as any additional factor that it determines to be relevant to the best interests of the child:

(a) The child has special needs.

(b) The child has extraordinary educational expenses.

(c) One or both of the parents are minors.

(d) The child's residence income is below the threshold to qualify for public assistance, and at least one parent has sufficient income to pay additional support to raise the child's standard of living above the public assistance threshold.

(e) A reduction of income available to support a child has occurred due to extraordinary levels of jointly accumulated debt.

- (f) The court awards property in lieu of support for the benefit of the child.
- (g) One or both parents are incarcerated without income or assets.
- (h) One or both parents have incurred, or are likely to incur, extraordinary medical expenses either for themselves or a dependent.
- (i) One or both parents earn incomes of a magnitude not fully taken into consideration by the formula.
- (j) One or both parents have varying amounts of irregular bonus income.
- (k) Someone other than the parent can supply reasonable and appropriate health care coverage. (2004 MCSFM 1.04(D)).

Here, the trial court failed to make almost all of the required findings. Further, it utterly failed to make any attempt to address the best interests of respondent's minor child. I disagree with the majority that there was "substantial compliance" with the requirements for deviating from the child support formula. For this reason alone, this matter should be reversed in order that the trial court could make the proper findings.

But, even accepting that the trial court "substantially complied" and concluded a deviation was proper because his medical records "indicate that he suffers from a variety of neurological [sic] and cognitive disorders that substantially impair his ability to work," and thus "cannot earn enough money to support himself at a minimal level," and so "is not capable of paying child support," the record simply does not support a deviation to zero child support. Respondent's claim of disability had been denied and I would note that by even respondent's testimony he earns approximately \$15,000 per year. The medical expenses referred to are already taken into account by the formula, and if extraordinary, is only but *one* of many factors to be considered – not to the exclusion of all else. Moreover, the formula takes into account incomes calculated to be at or below poverty level and in cases where a noncustodial parent has a poverty level income or lower, that parent's base support payment is set at 10% of income. 2004 MCSFM 3.02(C).

A child is not a financial afterthought. I would find that the trial court abused its discretion in setting child support at zero. It failed to make the required statutory findings and completely ignored the best interests of the minor child. There may be occasions where a support order is properly set at zero, but in my opinion, this is not it. I would reverse.

/s/ Kirsten Frank Kelly